

AMENDED IN ASSEMBLY MAY 3, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1183**

**Introduced by Assembly Member Vargas**

February 22, 2005

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An act to amend Sections 1872, 1872.1, 1872.3, 1872.4, 1872.7, 1872.8, 1872.81, 1872.83, 1872.85, 1872.9, 1872.95, 1872.96, 1873.4, 1874.8, 1875.20, 1877.3, 1879.4, and 12964 of, and to repeal Sections 1871.4, 11760, and 11880 of, the Insurance Code, and to amend Section 138.7 of the Labor Code, and to add Sections 550.1, 550.2, 550.3, and 633.3 to, the Penal Code, relating to insurance fraud.

LEGISLATIVE COUNSEL'S DIGEST

AB 1183, as amended, Vargas. Insurance fraud.

~~Under existing law, fraudulent activities connected to workers' compensation are crimes. Those provisions are contained in the Insurance Code.~~

~~This bill would move those provisions to the Penal Code.~~

Under existing law, there is within the Department of Insurance a division empowered to enforce laws and regulations related to workers compensation fraud. The name of that division has changed from the Bureau of Fraudulent Claims to the Fraud Division.

This bill would make the relevant changes to update the name of the division in statute.

Existing law requires each insurer doing business in the state to pay an annual fee, in addition to other fees, of 30¢ for each vehicle it insures to fund certain consumer operations of the Department of Insurance related to automobile insurance, and an annual fee of 50¢ for each vehicle it insures, to fund the Fraud Division and an Organized Automobile Fraud Activity Interdiction Program. The

provisions authorizing both of those fees are repealed as of January 1, 2007.

~~This bill would repeal those repeal dates, thereby extending those fees indefinitely extend the operation of these provisions until January 1, 2013.~~

~~Under existing law, except as expressly permitted, a person or entity not a party to a claim for workers' compensation benefits may not obtain individually identifiable information, as defined.~~

~~This bill would expressly permit the Fraud Division to use individually identifiable information for purposes of carrying out its duties.~~

~~Existing law prohibits any person from wiretapping, eavesdropping, intercepting, or recording confidential communications, without the consent of all parties to the communication.~~

~~This bill would authorize a peace officer who is an investigator within the Fraud Division of the Department of Insurance, when acting within the course and scope of his or her employment and when conducting a criminal investigation, to listen to, monitor, or record any communication otherwise prohibited from being listened to, monitored, or recorded, but only after the Department of Insurance establishes a policy related thereto, and submits that policy to the Attorney General. The bill would state that any evidence obtained pursuant to that authorization is admissible.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 1871.4 of the Insurance Code, as~~
- 2     ~~amended by Section 1 of Chapter 2 of the 4th Extraordinary~~
- 3     ~~Session of the Statutes of 2004, is repealed.~~
- 4     ~~SEC. 2.~~
- 5     ~~SECTION 1. Section 1872 of the Insurance Code is amended~~
- 6     ~~to read:~~
- 7     ~~1872. There is created within the department the Fraud~~
- 8     ~~Division to enforce the provisions of Sections 549, 550, and~~
- 9     ~~550.1 and 550 of the Penal Code, and to administer the~~
- 10    ~~provisions of Article 3 (commencing with Section 1873).~~

~~SEC. 3.~~

*SEC. 2.* Section 1872.1 of the Insurance Code is amended to read:

1872.1. (a) There is created within the Fraud Division an advisory committee on automobile insurance fraud and economic automobile theft prevention, investigation, and prosecution, as provided in this chapter. The committee shall be composed of the Chief of the Fraud Division, a representative from the Department of Justice, the Department of Motor Vehicles, the Division of Investigation of the Department of Consumer Affairs, the Department of the California Highway Patrol, the Bureau of Automotive Repair, the Parole and Community Services Division of the Department of Corrections, the State Bar of California, the Medical Board of California, the State Board of Chiropractic Examiners, two representatives from local law enforcement agencies, one of whom shall be a prosecutor, and representatives of three insurers assessed pursuant to Section 1872.8, and a representative of a labor organization with members in the automotive repair business.

(b) The commissioner shall select representatives from local law enforcement agencies from names submitted from local law enforcement agencies. The commissioner shall select one insurer representative from each of the following three categories from nominees submitted by insurers in each category: one representative of insurers with average annual automobile liability premiums in California of less than one hundred million dollars (\$100,000,000) in the preceding three years; one representative of insurers with average annual automobile liability premiums in California between one hundred million dollars (\$100,000,000) and seven hundred million dollars (\$700,000,000) in the preceding three years; and one representative of insurers with average annual automobile liability premiums in California exceeding seven hundred million dollars (\$700,000,000) in the preceding three years. At least one insurer representative shall be employed by an insurer having its principal headquarters in California. Members appointed by the commissioner shall serve at the pleasure of the commissioner. Representatives from other agencies shall be selected by the agencies represented.

(c) The advisory committee shall elect one of its members annually to chair its meetings. The chair shall conduct quarterly meetings of the committee in California and at such other times as he or she deems appropriate. Members of the committee shall serve without compensation except for expenses incidental to attendance at meetings called by the chair. A report of the committee's activities shall be included in the report required under Section 1872.9.

(d) The purpose and goals of the advisory committee are as follows:

(1) Recommend to the Fraud Division and other appropriate public agencies and private sector entities ways to coordinate the investigation, prosecution, and prevention of automobile insurance claims fraud, including economic automobile theft.

(2) Provide assistance to the Fraud Division towards implementing the goal of reducing the frequency and severity of fraudulent automobile insurance claims (adjusted for population growth and inflation) of 20 percent in urban areas and 10 percent in rural areas of the state within a 24-month period from the effective date of this chapter by utilizing resources set forth in Section 1872.8.

(3) Assure that preventive, investigative, prosecutive, and data collection efforts undertaken by the Fraud Division pursuant to this chapter are efficient, cost-effective, and complement similar efforts undertaken by law enforcement agencies and insurers.

(4) Make recommendations for inclusion in the Fraud Division's annual report required by Section 1872.9.

~~SEC. 4.~~

*SEC. 3.* Section 1872.3 of the Insurance Code is amended to read:

1872.3. (a) If, by its own inquiries or as a result of complaints, the Fraud Division has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates ~~Section 549, 550, or 550.1~~ *1871.4 of this code, or Section 549 or 550 of the Penal Code*, the commissioner in his or her discretion may do either or both of the following:

(1) Make those public or private investigations within or outside of this state that he or she deems necessary to determine whether any person has violated or is about to violate any provision of ~~Section 549, 550, or 550.1~~ *1871.4 of this code, or*

1 *Section 549 or 550* of the Penal Code, or to aid in the  
2 enforcement of this chapter.

3 (2) Publish information concerning any violation of this  
4 chapter or ~~Section 550 or 550.1~~ of the Penal Code.

5 (b) For purposes of any investigation under this section, the  
6 commissioner or any officer designated by the commissioner  
7 may administer oaths and affirmations, subpoena witnesses,  
8 compel their attendance, take evidence, and require the  
9 production of any books, papers, correspondence, memoranda,  
10 agreements, or other documents or records that the commissioner  
11 deems relevant or material to the inquiry, as provided by Section  
12 12924.

13 (c) If any matter that the commissioner seeks to obtain by  
14 request is located outside the state, the person so requested may  
15 make it available to the commissioner or his or her representative  
16 to be examined at the place where it is located. The  
17 commissioner may designate representatives, including officials  
18 of the state in which the matter is located, to inspect the matter  
19 on his or her behalf, and he or she may respond to similar  
20 requests from officials of other states.

21 (d) Except as provided in subdivision (e), the department's  
22 papers, documents, reports, or evidence relative to the subject of  
23 an investigation under this section shall not be subject to public  
24 inspection for so long a period as the commissioner deems  
25 reasonably necessary to complete the investigation, to protect the  
26 person investigated from unwarranted injury, or to serve the  
27 public interest. Furthermore, those papers, documents, reports, or  
28 evidence shall not be subject to subpoena or subpoena duces  
29 tecum until opened for public inspection by the commissioner,  
30 unless the commissioner otherwise consents or, after notice to the  
31 commissioner and a hearing, the superior court determines that  
32 the public interest and any ongoing investigation by the  
33 commissioner would not be unnecessarily jeopardized by  
34 compliance with the subpoena duces tecum.

35 (e) The Fraud Division shall furnish all papers, documents,  
36 reports, complaints, or other facts or evidence to any police,  
37 sheriff, or other law enforcement agency, when so requested, and  
38 shall assist and cooperate with those law enforcement agencies.

1     ~~SEC. 5.~~

2     *SEC. 4.* Section 1872.4 of the Insurance Code is amended to  
3 read:

4     1872.4. (a) Any company licensed to write insurance in this  
5 state that reasonably believes or knows that a fraudulent claim is  
6 being made shall, within 60 days after determination by the  
7 insurer that the claim appears to be a fraudulent claim, send to  
8 the Fraud Division, on a form prescribed by the department, the  
9 information requested by the form and any additional  
10 information relative to the factual circumstances of the claim and  
11 the parties claiming loss or damages that the commissioner may  
12 require. The Fraud Division shall review each report and  
13 undertake further investigation it deems necessary and proper to  
14 determine the validity of the allegations. Whenever the  
15 commissioner is satisfied that fraud, deceit, or intentional  
16 misrepresentation of any kind has been committed in the  
17 submission of the claim, he or she shall report the violations of  
18 law to the insurer, to the appropriate licensing agency, and to the  
19 district attorney of the county in which the offenses were  
20 committed, as provided by Sections 12928 and 12930. If the  
21 commissioner is satisfied that fraud, deceit, or intentional  
22 misrepresentation has not been committed, he or she shall report  
23 that determination to the insurer. If prosecution by the district  
24 attorney concerned is not begun within 60 days of the receipt of  
25 the commissioner's report, the district attorney shall inform the  
26 commissioner and the insurer as to the reasons for the lack of  
27 prosecution regarding the reported violations.

28     (b) This section shall not require an insurer to submit to the  
29 Fraud Division the information specified in subdivision (a) in  
30 either of the following instances:

31     (1) The insurer's initial investigation indicated a potentially  
32 fraudulent claim but further investigation revealed that it was not  
33 fraudulent.

34     (2) The insurer and the claimant have reached agreement as to  
35 the amount of the claim and the insurer does not have reasonable  
36 grounds to believe that claim to be fraudulent.

37     (c) Nothing contained in this article shall relieve an insurer of  
38 its existing obligations to also report suspected violations of law  
39 to appropriate local law enforcement agencies.

(d) Any police, sheriff, disciplinary body governed by the provisions of the Business and Professions Code, or other law enforcement agency shall furnish all papers, documents, reports, complaints, or other facts or evidence to the Fraud Division, when so requested, and shall otherwise assist and cooperate with the division.

(e) If an insurer, at the time the insurer, pursuant to subdivision (a) forwards to the Fraud Division information on a claim that appears to be fraudulent, has no evidence to believe the insured on that claim is involved with the fraud or the fraudulent collision, the insurer shall take all necessary steps to assure that no surcharge is added to the insured's premium because of the claim.

~~SEC. 6.~~

*SEC. 5.* Section 1872.7 of the Insurance Code is amended to read:

1872.7. The costs of administration and operation of the Fraud Division shall be borne by all of the insurers admitted to transact insurance in this state. The commissioner shall divide those costs among all of those insurers, assessing each company an identical amount adequate to provide the funds for each fiscal year of operation of the division. However, the assessment for each company shall not exceed one thousand three hundred dollars (\$1,300) in each fiscal year. All moneys received by the commissioner from insurers pursuant to this section shall be transmitted to the Treasurer to be deposited in the State Treasury to the credit of the Insurance Fund. All moneys that are deposited in the fund after receipt by the commissioner from insurers pursuant to this section are to be exclusively used for the support of the Fraud Division. To the extent the assessments against insurers made pursuant to this section are not sufficient to fund the entire operations of the division, other moneys appropriated to the department, if available, may be used, at the commissioner's discretion, to fund those operations not covered by the assessments. The total budget of the Fraud Division shall be as determined annually in the Budget Act.

~~SEC. 7.~~

*SEC. 6.* Section 1872.8 of the Insurance Code is amended to read:

1872.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed one dollar (\$1) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund increased investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft. Thirty-four percent of those funds received from ninety-five cents (\$0.95) of the assessment fee per insured vehicle shall be distributed to the Fraud Division for enhanced investigative efforts, 15 percent of that ninety-five cents (\$0.95) shall be deposited in the Motor Vehicle Account for appropriation to the Department of the California Highway Patrol for enhanced prevention and investigative efforts to deter economic automobile theft, and 51 percent of the funds shall be distributed to district attorneys for purposes of investigation and prosecution of automobile insurance fraud cases, including fraud involving economic automobile theft.

(b) (1) The commissioner shall award funds to district attorneys according to population. The commissioner may alter this distribution formula as necessary to achieve the most effective distribution of funds. Each local district attorney desiring a portion of those funds shall submit to the commissioner an application detailing the proposed use of any moneys that may be provided. The application shall include a detailed accounting of assessment funds received and expended in prior years, including at a minimum, all of the following:

(A) The amount of funds received and expended.

(B) The uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type.

(C) Results achieved as a consequence of expenditures made, including the number of investigations, arrests, complaints filed, convictions, and the amounts originally claimed in cases prosecuted compared to payments actually made in those cases.

(D) Other relevant information as the commissioner may reasonably require.

Any district attorney who fails to submit an application within 90 days of the commissioner's deadline for applications shall be subject to loss of distribution of the money. The commissioner may consider recommendations and advice of the Fraud Division



1 and the Commissioner of the California Highway Patrol in  
2 allocating moneys to local district attorneys. Any district attorney  
3 that receives funds shall submit an annual report to the  
4 commissioner, which may be made public, as to the success of  
5 the program administered. The report shall provide information  
6 and statistics on the number of active investigations, arrests,  
7 indictments, and convictions. Both the application for moneys  
8 and the distribution of moneys shall be public documents. The  
9 commissioner shall conduct a fiscal audit of the programs  
10 administered under this subdivision at least once every three  
11 years. The cost of a fiscal audit shall be shared equally between  
12 the department and the district attorney. Information submitted to  
13 the commissioner pursuant to this section concerning criminal  
14 investigations, whether active or inactive, shall be confidential. If  
15 the commissioner determines that a district attorney is unable or  
16 unwilling to investigate and prosecute automobile insurance  
17 fraud claims as provided by this subdivision or Section 1874.8,  
18 the commissioner may discontinue the distribution of funds  
19 allocated for that county and may redistribute those funds to  
20 other eligible district attorneys.

21 (2) The Department of the California Highway Patrol shall  
22 submit to the commissioner, for informational purposes only, a  
23 report detailing the department's proposed use of funds under  
24 this section and an annual report in the same format as required  
25 of district attorneys under paragraph (1).

26 (c) The remaining five cents (\$0.05) shall be spent for  
27 enhanced automobile insurance fraud investigation by the Fraud  
28 Division.

29 (d) Except for funds to be deposited in the Motor Vehicle  
30 Account for allocation to the Department of the California  
31 Highway Patrol for purposes of the Motor Vehicle Prevention  
32 Act, (Chapter 5 (commencing with Section 10900) of Division 4  
33 of the Vehicle Code), the funds received under this section shall  
34 be deposited in the Insurance Fund and be expended and  
35 distributed when appropriated by the Legislature.

36 (e) In the course of its investigations, the Fraud Division shall  
37 aggressively pursue all reported incidents of probable fraud and,  
38 in addition, shall forward to the appropriate disciplinary body the  
39 names of any individuals licensed under the Business and

1 Professions Code who are suspected of actively engaging in  
2 fraudulent activity along with all relevant supporting evidence.

3 (f) As used in this section “economic automobile theft” means  
4 automobile theft perpetrated for financial gain, including, but not  
5 limited to, the following:

6 (1) Theft of a motor vehicle for financial gain.

7 (2) Reporting that a motor vehicle has been stolen for the  
8 purpose of filing a false insurance claim.

9 (3) Engaging in any act prohibited by Chapter 3.5  
10 (commencing with Section 10801) of Division 4 of the Vehicle  
11 Code.

12 (4) Switching of vehicle identification numbers to obtain title  
13 to a stolen motor vehicle.

14 ~~SEC. 8.~~

15 *SEC. 7.* Section 1872.81 of the Insurance Code is amended to  
16 read:

17 1872.81. In addition to the fee imposed pursuant to Section  
18 1872.8, each insurer doing business in this state shall pay to the  
19 commissioner an annual fee of thirty cents (\$0.30) for each  
20 vehicle insured under an insurance policy it issues in this state,  
21 for expenditure as follows:

22 (a) An amount equivalent to twenty cents (\$0.20) of the fee  
23 imposed per insured vehicle by this section shall be used for the  
24 purpose of paying for consumer service functions of the  
25 department that are related to automobile insurance. The  
26 revenues under this subdivision shall be used to improve service  
27 to consumers through the rating and underwriting services  
28 bureau, the claims services bureau, the investigations bureau, or  
29 any successor bureaus of the department that may assume the  
30 consumer service functions of these bureaus. The department  
31 shall develop a plan for the use of the revenues available under  
32 this subdivision for the purposes authorized, and shall submit the  
33 plan to the Assembly and Senate Committees on Insurance.

34 (b) An amount equivalent to ten cents (\$0.10) of the fee  
35 imposed per insured vehicle by this section shall be used for the  
36 purpose of improving consumer functions of the department  
37 related to automobile insurance. Revenues available under this  
38 subdivision shall be used to improve consumer functions through  
39 one or more of the following:

40 (1) The rating and underwriting services bureau .

1 (2) The claims services bureau.

2 (3) The investigations bureau.

3 (4) Any successor bureau of the department that may assume  
4 automobile insurance consumer functions of these bureaus.  
5 These revenues may also be used for improving the ability of the  
6 department to respond to consumer complaints and information  
7 requests through the department's toll-free telephone number,  
8 and for improving the ability of the department to offer  
9 information about automobile insurance rates to the public. The  
10 department shall develop a plan for the use of the revenues  
11 available under this subdivision for the purpose authorized, and  
12 shall submit the plan to the Assembly and Senate Committees on  
13 Insurance.

14 *(c) This section shall remain in effect only until January 1,*  
15 *2013, and as of that date is repealed, unless a later enacted*  
16 *statute, that is enacted before January 1, 2013, deletes or extends*  
17 *that date.*

18 ~~SEC. 9.~~

19 SEC. 8. Section 1872.83 of the Insurance Code is amended to  
20 read:

21 1872.83. (a) The commissioner shall ensure that the Fraud  
22 Division aggressively pursues all reported incidents of probable  
23 workers' compensation fraud, as defined in Sections ~~549, 550.1,~~  
24 ~~550.2, and 550.3~~ 11760 and 11880, in subdivision (a) of Section  
25 1871.4, and in Section 549 of the Penal Code, and forwards to  
26 the appropriate disciplinary body the names, along with all  
27 supporting evidence, of any individuals licensed under the  
28 Business and Professions Code who are suspected of actively  
29 engaging in fraudulent activity. The Fraud Division shall forward  
30 to the Insurance Commissioner or the Director of Industrial  
31 Relations, as appropriate, the name, along with all supporting  
32 evidence, of any insurer, as defined in subdivision (c) of Section  
33 1877.1, suspected of actively engaging in the fraudulent denial of  
34 claims.

35 (b) To fund increased investigation and prosecution of  
36 workers' compensation fraud, and of willful failure to secure  
37 payment of workers' compensation, in violation of Section  
38 3700.5 of the Labor Code, there shall be an annual assessment as  
39 follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of seven members consisting of two representatives of organized labor, two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing organized labor, self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars (\$100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Fraud Division and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in *Sections 1871.4, 11760, and 11880*, Section 3700.5 of the Labor Code, and ~~Sections 549, 550.1, 550.2, and 550.3~~ *Section 549* of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced investigation and prosecution of workers'

1 compensation fraud and of willful failure to secure payment of  
2 workers' compensation as provided in this section.

3 (c) For each fiscal year, the total amount of revenues derived  
4 from the assessment pursuant to subdivision (b) shall, together  
5 with amounts collected pursuant to fines imposed for unlawful  
6 acts described in *Sections 1871.4, 11760, and 11880*, Section  
7 3700.5 of the Labor Code, and ~~Sections 549, 550.1, 550.2, and~~  
8 ~~550.3~~ *Section 549* of the Penal Code, not be less than three  
9 million dollars (\$3,000,000). Any funds appropriated by the  
10 Legislature pursuant to subdivision (b) that are not expended in  
11 the fiscal year for which they have been appropriated, and that  
12 have not been allocated under subdivision (f), shall be applied to  
13 satisfy for the immediately following fiscal year the minimum  
14 total amount required by this subdivision. In no case may that  
15 money be transferred to the General Fund.

16 (d) After incidental expenses, at least 40 percent of the funds  
17 to be used for the purposes of this section shall be provided to the  
18 Fraud Division of the Department of Insurance for enhanced  
19 investigative efforts, and at least 40 percent of the funds shall be  
20 distributed to district attorneys, pursuant to a determination by  
21 the commissioner with the advice and consent of the division and  
22 the Fraud Assessment Commission, as to the most effective  
23 distribution of moneys for purposes of the investigation and  
24 prosecution of workers' compensation fraud cases and cases  
25 relating to the willful failure to secure the payment of workers'  
26 compensation. Each district attorney seeking a portion of the  
27 funds shall submit to the commissioner an application setting  
28 forth in detail the proposed use of any funds provided. A district  
29 attorney receiving funds pursuant to this subdivision shall submit  
30 an annual report to the commissioner with respect to the success  
31 of his or her efforts. Upon receipt, the commissioner shall  
32 provide copies to the Fraud Division and the Fraud Assessment  
33 Commission of any application, annual report, or other  
34 documents with respect to the allocation of money pursuant to  
35 this subdivision. Both the application for moneys and the  
36 distribution of moneys shall be public documents. Information  
37 submitted to the commissioner pursuant to this section  
38 concerning criminal investigations, whether active or inactive,  
39 shall be confidential.

(e) If a district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims or claims relating to the willful failure to secure the payment of workers' compensation that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other fraud prosecution funds or claims relating to the willful failure to secure the payment of workers' compensation prosecution otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers'

1 compensation that are redirected pursuant to this subdivision.  
2 The Attorney General shall submit an annual report to the  
3 commissioner with respect to the success of the fraud prosecution  
4 efforts of his or her office.

5 (3) Neither the Attorney General nor any district attorney shall  
6 be required to relinquish control of any investigation or  
7 prosecution undertaken pursuant to this subdivision unless the  
8 commissioner determines that satisfactory progress is no longer  
9 being made on the case or the case has been abandoned.

10 (4) A county that has become a nonparticipating county due to  
11 the inability or unwillingness of its district attorney to investigate  
12 and prosecute workers' compensation fraud or the willful failure  
13 to secure the payment of workers' compensation shall not  
14 become eligible to receive funding under this section until it has  
15 submitted a new application that meets the requirements of  
16 subdivision (d) and the applicable regulations.

17 (f) If in any fiscal year the Fraud Division does not use all of  
18 the funds made available to it under subdivision (d), any  
19 remaining funds may be distributed to district attorneys pursuant  
20 to a determination by the commissioner in accordance with the  
21 same procedures set forth in subdivision (d).

22 (g) The commissioner shall adopt rules and regulations to  
23 implement this section in accordance with the rulemaking  
24 provisions of the Administrative Procedure Act (Chapter 3.5  
25 (commencing with Section 11340) of Part 1 of Division 3 of Title  
26 2 of the Government Code). Included in the rules and regulations  
27 shall be the criteria for redistributing funds to district attorneys  
28 and the Attorney General. The adoption of the rules and  
29 regulations shall be deemed to be an emergency and necessary  
30 for the immediate preservation of the public peace, health, and  
31 safety, or general welfare.

32 (h) The department shall report on an annual basis to the  
33 Legislature and the Fraud Assessment Commission on the  
34 activities of the Fraud Division and district attorneys supported  
35 by the funds provided by this section.

36 The annual report shall include, but is not limited to, all of the  
37 following information for the department and each district  
38 attorney's office:

39 (1) All allocations, distributions, and expenditures of funds.

40 (2) The number of search warrants issued.

1 (3) The number of arrests and prosecutions, and the aggregate  
2 number of parties involved in each.

3 (4) The number of convictions and the names of all convicted  
4 fraud perpetrators.

5 (5) The estimated value of all assets frozen, penalties assessed,  
6 and restitutions made for each conviction.

7 (6) Any additional items necessary to fully inform the Fraud  
8 Assessment Commission and the Legislature of the  
9 fraud-fighting efforts financed through this section.

10 (i) In order to meet the requirements of subdivision (g), the  
11 department shall submit a biannual information request to those  
12 district attorneys who have applied for and received funding  
13 through the annual assessment process under this section.

14 (j) Assessments levied or collected to fight workers'  
15 compensation fraud and insurance fraud are not taxes. Those  
16 funds are entrusted to the state to fight fraud and the willful  
17 failure to secure the payment of workers' compensation by  
18 funding state and local investigation and prosecution efforts.  
19 Accordingly, any funds resulting from assessments, fees,  
20 penalties, fines, restitution, or recovery of costs of investigation  
21 and prosecution deposited in the Insurance Fund shall not be  
22 deemed "unexpended" funds for any purpose and, if remaining in  
23 that account at the end of any fiscal year, shall be applied as  
24 provided in subdivision (f) and to offset or augment subsequent  
25 years' program funding.

26 (k) The Bureau of State Audits shall evaluate the effectiveness  
27 of the efforts of the Fraud Assessment Commission, the Fraud  
28 Division, the Department of Insurance, and the Department of  
29 Industrial Relations, as well as local law enforcement agencies,  
30 including district attorneys, in identifying, investigating, and  
31 prosecuting workers' compensation fraud and the willful failure  
32 to secure payment of workers' compensation. The report shall  
33 specifically identify areas of deficiencies. Included in this report  
34 shall be recommendations on whether the current program  
35 provides the appropriate levels of accountability for those  
36 responsible for the allocation and expenditure of funds raised  
37 from the assessment provided in this section. The Bureau of State  
38 Audits shall submit a report to the Chairperson of the Senate  
39 Committee on Labor and Industrial Relations and the



1 Chairperson of the Assembly Committee on Insurance on or  
2 before May 1, 2004.

3 ~~SEC. 10.~~

4 *SEC. 9.* Section 1872.85 of the Insurance Code is amended to  
5 read:

6 1872.85. (a) Every admitted disability insurer or other entity  
7 liable for any loss due to health insurance fraud doing business in  
8 this state shall pay an annual fee to be determined by the  
9 commissioner, but not to exceed ten cents (\$0.10) annually for  
10 each insured under an individual or group insurance policy it  
11 issues in this state, in order to fund increased investigation and  
12 prosecution of fraudulent disability insurance claims. After  
13 incidental expenses, 50 percent of those funds received from the  
14 assessment fee per insured shall be distributed to the Fraud  
15 Division of the Department of Insurance for enhanced  
16 investigative efforts, and 50 percent of the funds shall be  
17 distributed to local district attorneys, pursuant to subdivisions (b)  
18 and (c), for investigation and prosecution of disability insurance  
19 fraud cases. The funds received under this section shall be  
20 deposited into the Disability Insurance Fraud Account, which is  
21 hereby created in the Insurance Fund, and shall be expended and  
22 distributed, when appropriated by the Legislature, only for  
23 enhanced investigation and prosecution of disability insurance  
24 fraud.

25 In the course of its investigation, the Fraud Division shall  
26 aggressively pursue all reported incidents of probable fraud and,  
27 in addition, shall forward to the appropriate disciplinary body the  
28 names of any individuals licensed under the Business and  
29 Professions Code who are convicted of engaging in fraudulent  
30 activity along with all relevant supporting evidence.

31 (b) The commissioner shall distribute funds pursuant to  
32 subdivision (a) to district attorneys who are able to show a likely  
33 positive outcome that will enhance the prosecution of disability  
34 insurance fraud in their jurisdiction based on specific criteria  
35 promulgated by the commissioner. A district attorney desiring  
36 funds pursuant to subdivision (a) shall submit to the  
37 commissioner an application that includes, but is not limited to,  
38 all of the following:

39 (1) The proposed use of the moneys and the anticipated  
40 outcome.

1 (2) A list of all prior cases or projects in the district attorney's  
2 jurisdiction that have been funded under the provisions of this  
3 section, and a copy of the final accounting for each case or  
4 project. If a case or project is ongoing, the most recent  
5 accounting shall be provided.

6 (3) A detailed budget for the moneys, including salaries and  
7 general expenses, that specifically identifies the purchase or  
8 rental cost of equipment or supplies.

9 (c) (1) A district attorney who receives moneys pursuant to  
10 this section shall submit a final detailed accounting at the  
11 conclusion of each case or project funded. For a case or project  
12 that continues for longer than six months, an interim accounting  
13 shall be submitted every six months, or as otherwise directed by  
14 the commissioner.

15 (2) A district attorney who receives moneys pursuant to this  
16 section shall submit a final report to the commissioner, which  
17 may be made public, as to the success of each case or project  
18 funded by this section. The report shall provide information and  
19 statistics on the number of active investigations, arrests,  
20 indictments, and convictions associated with a case or project.  
21 The applications for moneys, the distribution of moneys, and the  
22 annual report required by Section 1872.9 shall be public  
23 documents.

24 (3) Notwithstanding any other provision of this section,  
25 information submitted to the commissioner pursuant to this  
26 section concerning criminal investigations, whether active or  
27 inactive, shall be confidential.

28 (4) The commissioner may conduct a fiscal audit of the  
29 programs administered under this subdivision. The fiscal audit  
30 shall be conducted by an internal audit unit of the department.  
31 The cost of fiscal audits shall be paid from the Disability  
32 Insurance Fraud Fund, upon appropriation by the Legislature.

33 (5) If the commissioner determines that a district attorney is  
34 unable or unwilling to investigate or prosecute a relevant  
35 disability insurance fraud case, the commissioner may  
36 discontinue distribution of moneys allocated for that matter  
37 pursuant to this section, and may redistribute moneys to other  
38 eligible district attorneys.

39 (d) Activities of the Fraud Division with regard to  
40 investigating and prosecuting fraudulent disability insurance

1 claims pursuant to this section shall be included in the report  
2 required by Section 1872.9.

3 (e) This section shall not apply to policies issued by a  
4 reciprocal or interinsurance exchange, as defined by Sections  
5 1303 and 1350, or coverage provided by or through a motor club,  
6 as defined by Section 12142, affiliated with a reciprocal or  
7 interinsurance exchange, if the annual premium charged for the  
8 coverage or the annual cost to the insurer for providing that  
9 coverage does not exceed one dollar (\$1) per insured.

10 ~~SEC. 11.~~

11 *SEC. 10.* Section 1872.9 of the Insurance Code is amended to  
12 read:

13 1872.9. The Fraud Division shall annually compile and  
14 report, as a part of the commissioner's annual report as required  
15 by Section 12922, the following information:

16 (a) The number of cases reported to the division pursuant to  
17 this chapter.

18 (b) The number of cases rejected for which an investigation  
19 was not initiated by the division due to insufficient evidence to  
20 proceed and the number of cases rejected for which an  
21 investigation was not initiated by the division due to any other  
22 reason.

23 (c) The number of cases that were prosecuted in cooperation  
24 with licensing agencies governed by the Business and  
25 Professions Code.

26 (d) The number and kind of cases prosecuted as a result of  
27 moneys received under Section 1872.7.

28 (e) An estimate of the economic value of insurance fraud by  
29 type of insurance fraud.

30 (f) Recommendations on ways insurance fraud may be  
31 reduced.

32 (g) A summary of the division's activities with respect to  
33 pursuing a reduction of fraud with all of the following:

34 (1) Insurance companies.

35 (2) The Department of Motor Vehicles.

36 (3) The Department of the California Highway Patrol.

37 (4) Licensing agencies governed by the Business and  
38 Professions Code.

39 (5) The Department of Insurance.

40 (6) Local and state law enforcement agencies.

(7) Employers, as defined in Section 3300 of the Labor Code, who are self-insured for workers' compensation and doing business in the state.

(h) Basic claims information including trends of payments by type of claim and other claim information that is generally provided in a closed claim study.

(i) A summary of the division's activities with respect to the reduction, pursuant to Section ~~550.1 of the Penal Code~~ 1871.4, of fraudulent denials and payments of compensation.

(j) The number and types of cases investigated and prosecuted with funds specified in Section 1872.83.

~~SEC. 12.~~

*SEC. 11.* Section 1872.95 of the Insurance Code is amended to read:

1872.95. (a) Within existing resources, the Medical Board of California, the Board of Chiropractic Examiners, and the State Bar shall each designate employees to investigate and report on possible fraudulent activities relating to workers' compensation, motor vehicle insurance, or disability insurance by licensees of the board or the bar. Those employees shall actively cooperate with the Fraud Division in the investigation of those activities.

(b) The Medical Board of California, the Board of Chiropractic Examiners, and the State Bar shall each report annually, on or before March 1, to the committees of the Senate and Assembly having jurisdiction over insurance on their activities established pursuant to subdivision (a) for the previous year. That report shall specify, at a minimum, the number of cases investigated, the number of cases forwarded to the Fraud Division or other law enforcement agencies, the outcome of all cases listed in the report, and any other relevant information concerning those cases or general activities conducted under subdivision (a) for the previous year. The report shall include information regarding activities conducted in connection with cases of suspected automobile insurance fraud.

~~SEC. 13.~~

*SEC. 12.* Section 1872.96 of the Insurance Code is amended to read:

1872.96. The commissioner shall prepare an annual report, which shall be a public record, with respect to the receipts, expenditures, and activities of the Fraud Division for the year just

ended. The report shall be submitted to the Governor and to the Legislature, no later than January 31 of the following year. This report shall not contain any individually identifiable information.

~~SEC. 14.~~

SEC. 13. Section 1873.4 of the Insurance Code is amended to read:

1873.4. Any or all information released or received by an authorized governmental entity pursuant to Section 1873 or 1873.1 shall be provided by that agency to the Fraud Division within 10 days of the agency's receipt of the information.

~~SEC. 15.~~

SEC. 14. Section 1874.8 of the Insurance Code, as added by Section 7 of Chapter 885 of the Statutes of 1999, is amended to read:

1874.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed fifty cents (\$0.50) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund the ~~Bureau of Fraudulent Claims~~ *Fraud Division* and an Organized Automobile Fraud Activity Interdiction Program. The commissioner shall award three to 10 grants for a coordinated program targeted at the successful prosecution and elimination of organized automobile fraud activity. The grants may only be awarded to district attorneys.

(b) In determining whether to award a district attorney a grant, the commissioner shall consider factors indicating organized automobile fraud activity in the district attorney's county, including, but not limited to, the county's level of general criminal activity, population density, automobile insurance claims frequency, number of suspected fraudulent claims, and prior and current evidence of organized automobile fraud activity. Funding priority shall be given to those grant applications with the potential to have the greatest impact on organized automobile insurance fraud activity.

(c) All participants of a grant referred to in subdivision (a) shall coordinate their efforts and work in conjunction with the bureau, other participating agencies, and all interested insurers in this regard. Of the funds collected pursuant to this section, 42.5 percent shall be distributed to district attorneys, 42.5 percent shall be distributed to the ~~Bureau of Fraudulent Claims~~ *Fraud*

1 *Division* , and 15 percent shall be distributed to the Department  
2 of the California Highway Patrol. Funds distributed pursuant to  
3 this section to the ~~Bureau of Fraudulent Claims~~ *Fraud Division*  
4 and to the Department of the California Highway Patrol shall be  
5 used to fund bureau and Department of the California Highway  
6 Patrol investigators who shall be assigned to work solely in  
7 conjunction with district attorneys who are awarded grants. Each  
8 grantee shall be notified by the ~~Bureau of Fraudulent Claims~~  
9 *Fraud Division* of the investigators assigned to work with the  
10 grantee. Nothing shall prohibit the referral of any cases  
11 developed by the ~~Bureau of Fraudulent Claims~~ *Fraud Division* to  
12 any appropriate prosecutorial entity.

13 (d) A grant under this section shall be awarded on the basis of  
14 a single application for a period of three years and shall be  
15 subject where applicable to the requirements of subdivision (b) of  
16 Section 1872.8, except for the requirement that grants be  
17 awarded according to population. Continued funding of a grant  
18 shall be contingent upon a grantee's successful performance as  
19 determined by an annual review by the commissioner. Any  
20 redirection of grant funds under this section shall be made only  
21 for good cause. The Department of the California Highway  
22 Patrol shall submit to the commissioner, for informational  
23 purposes only, an annual report on its expenditure of funds under  
24 this section in the same format as is required of grantees under  
25 this section.

26 (e) There shall be no prohibition against a joint application by  
27 two or more district attorneys for a grant award under this  
28 section.

29 (f) The ~~bureau~~ *Fraud Division* shall report, on or before  
30 January 1, 2005, to the committees of the Senate and Assembly  
31 having jurisdiction over insurance on the results of the grant  
32 program established by this section, including funding distributed  
33 to the Department of the California Highway Patrol.

34 (g) For purposes of this section "organized automobile fraud  
35 activity" means two or more persons who conspire, aid and abet,  
36 or in any other manner act together, to engage in economic  
37 automobile theft as defined in subdivision (f) of Section 1872.8,  
38 or to violate any of the following provisions in relation to an  
39 automobile insurance claim:

40 (1) Section 650 or 6152 of the Business and Professions Code.

1 (2) Section 750 of the Insurance Code.

2 (3) Section 549, 550, or 551 of the Penal Code.

3 *(h) This section shall remain in effect only until January 1,*  
4 *2013, and as of that date is repealed, unless a later enacted*  
5 *statute, that is enacted before January 1, 2013, deletes or extends*  
6 *that date.*

7 ~~SEC. 16.~~

8 *SEC. 15.* Section 1875.20 of the Insurance Code is amended  
9 to read:

10 1875.20. Every insurer admitted to do business in this state,  
11 except those otherwise exempted in this code, shall provide for  
12 the continuous operation of a unit or division to investigate  
13 possible fraudulent claims by insureds or by persons making  
14 claims for services or repairs against policies held by insureds, ~~or~~  
15 ~~any other form of insurance fraud.~~

16 ~~SEC. 17.~~

17 *SEC. 16.* Section 1877.3 of the Insurance Code is amended to  
18 read:

19 1877.3. (a) Upon written request to an insurer or a licensed  
20 rating organization by an authorized governmental agency, an  
21 insurer, an agent authorized by that insurer, or a licensed rating  
22 organization to act on behalf of the insurer, shall release to the  
23 requesting authorized governmental agency any or all relevant  
24 information deemed important to the authorized governmental  
25 agency that the insurer or licensed rating organization may  
26 possess relating to any specific workers' compensation insurance  
27 fraud investigation.

28 (b) (1) When an insurer or licensed rating organization knows  
29 or reasonably believes it knows the identity of a person or entity  
30 whom it has reason to believe committed a fraudulent act relating  
31 to a workers' compensation insurance claim or a workers'  
32 compensation insurance policy, including any policy application,  
33 or has knowledge of such a fraudulent act that is reasonably  
34 believed not to have been reported to an authorized governmental  
35 agency, then, for the purpose of notification and investigation,  
36 the insurer, or agent authorized by an insurer to act on its behalf,  
37 or licensed rating organization shall notify the local district  
38 attorney's office and the Fraud Division of the Department of  
39 Insurance, and may notify any other authorized governmental  
40 agency of that suspected fraud and provide any additional

1 information in accordance with subdivision (a). The insurer or  
2 licensed rating organization shall state in its notice the basis of  
3 the suspected fraud.

4 (2) Insurers shall use a form prescribed by the department for  
5 the purposes of reporting suspected fraudulent workers'  
6 compensation acts pursuant to this subdivision.

7 (3) Nothing in this subdivision shall abrogate or impair the  
8 rights or powers created under subdivision (a).

9 (c) The authorized governmental agency provided with  
10 information pursuant to subdivision (a), (b), or (e) may release or  
11 provide that information in a confidential manner to any other  
12 authorized governmental agency for purposes of investigation,  
13 prosecution, or prevention of insurance fraud or workers'  
14 compensation fraud.

15 (d) An insurer or licensed rating organization providing  
16 information to an authorized governmental agency pursuant to  
17 this section shall provide the information within a reasonable  
18 time, but not exceeding 60 days from the day on which the duty  
19 arose.

20 (e) Upon written request by an authorized governmental  
21 agency, as specified in subdivision (o) of Section 1095 of the  
22 Unemployment Insurance Code, the Employment Development  
23 Department shall release to the requesting agency any or all  
24 relevant information that the Employment Development  
25 Department may possess relating to any specific workers'  
26 compensation insurance fraud investigation. Relevant  
27 information may include, but is not limited to, all of the  
28 following:

29 (1) Copies of unemployment and disability insurance  
30 application and claim forms and copies of any supporting  
31 medical records, documentation, and records pertaining thereto.

32 (2) Copies of returns filed by an employer pursuant to Section  
33 1088 of the Unemployment Insurance Code and copies of  
34 supporting documentation.

35 (3) Copies of benefit payment checks issued to claimants.

36 (4) Copies of any documentation that specifically identifies the  
37 claimant by social security number, residence address, or  
38 telephone number.



~~SEC. 18.~~

*SEC. 17.* Section 1879.4 of the Insurance Code is amended to read:

1879.4. (a) The Chief of the Fraud Division and those investigators designated by him or her may expend funds to conduct undercover activities, employ civilian operatives, or in any other manner not prohibited by law to investigate insurance fraud or workers' compensation fraud.

(b) The money expended pursuant to subdivision (a) shall be paid out of the funds appropriated or made available by law for the support or use of the department.

~~SEC. 19. Section 11760 of the Insurance Code is repealed.~~

~~SEC. 20. Section 11880 of the Insurance Code is repealed.~~

~~SEC. 21.~~

*SEC. 18.* Section 12964 of the Insurance Code is amended to read:

12964. The Fraud Division shall annually compile and report, as a part of the commissioner's annual report required by Section 12960, the following information:

(a) The number of cases reported to the division pursuant to Article 6 (commencing with Section 13000).

(b) The number of cases rejected wherein an investigation was not initiated by the division due to insufficient evidence to proceed and the number of cases rejected wherein an investigation was not initiated by the division due to any other reason.

~~SEC. 22. Section 138.7 of the Labor Code is amended to read:~~

~~138.7. (a) Except as expressly permitted in subdivision (b), a person or public or private entity not a party to a claim for workers' compensation benefits may not obtain individually identifiable information obtained or maintained by the division on that claim. For purposes of this section, "individually identifiable information" means any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity.~~

~~(b) (1) The administrative director, or a statistical agent designated by the administrative director, may use individually identifiable information for purposes of creating and maintaining~~

1 the workers' compensation information system as specified in  
2 Section 138.6.

3 (2) The State Department of Health Services may use  
4 individually identifiable information for purposes of establishing  
5 and maintaining a program on occupational health and  
6 occupational disease prevention as specified in Section 105175  
7 of the Health and Safety Code.

8 (3) The Fraud Division of the Department of Insurance may  
9 use individually identifiable information for purposes of carrying  
10 out its duties, including pursuit of incidents of probable workers'  
11 compensation fraud.

12 (4) (A) Individually identifiable information may be used by  
13 the Division of Workers' Compensation, the Division of  
14 Occupational Safety and Health, and the Division of Labor  
15 Statistics and Research as necessary to carry out their duties. The  
16 administrative director shall adopt regulations governing the  
17 access to the information described in this subdivision by these  
18 divisions. Any regulations adopted pursuant to this subdivision  
19 shall set forth the specific uses for which this information may be  
20 obtained.

21 (B) Individually identifiable information maintained in the  
22 workers' compensation information system and the Division of  
23 Workers' Compensation may be used by researchers employed  
24 by or under contract to the Commission on Health and Safety and  
25 Workers' Compensation as necessary to carry out the  
26 commission's research. The administrative director shall adopt  
27 regulations governing the access to the information described in  
28 this subdivision by commission researchers. These regulations  
29 shall set forth the specific uses for which this information may be  
30 obtained and include provisions guaranteeing the confidentiality  
31 of individually identifiable information. Individually identifiable  
32 information obtained under this subdivision shall not be  
33 disclosed to commission members. No individually identifiable  
34 information obtained by researchers under contract to the  
35 commission pursuant to this subparagraph may be disclosed to  
36 any other person or entity, public or private, for a use other than  
37 that research project for which the information was obtained.  
38 Within a reasonable period of time after the research for which  
39 the information was obtained has been completed, the data  
40 collected shall be modified in a manner so that the subjects

1 cannot be identified, directly or through identifiers linked to the  
2 subjects.

3 ~~(5) The administrative director shall adopt regulations~~  
4 ~~allowing reasonable access to individually identifiable~~  
5 ~~information by other persons or public or private entities for the~~  
6 ~~purpose of bona fide statistical research. This research shall not~~  
7 ~~divulge individually identifiable information concerning a~~  
8 ~~particular employee, employer, claims administrator, or any other~~  
9 ~~person or entity. The regulations adopted pursuant to this~~  
10 ~~paragraph shall include provisions guaranteeing the~~  
11 ~~confidentiality of individually identifiable information. Within a~~  
12 ~~reasonable period of time after the research for which the~~  
13 ~~information was obtained has been completed, the data collected~~  
14 ~~shall be modified in a manner so that the subjects cannot be~~  
15 ~~identified, directly or through identifiers linked to the subjects.~~

16 ~~(6) This section shall not operate to exempt from disclosure~~  
17 ~~any information that is considered to be a public record pursuant~~  
18 ~~to the California Public Records Act (Chapter 3.5 (commencing~~  
19 ~~with Section 6250) of Division 7 of Title 1 of the Government~~  
20 ~~Code) contained in an individual's file once an application for~~  
21 ~~adjudication has been filed pursuant to Section 5501.5.~~

22 ~~However, individually identifiable information shall not be~~  
23 ~~provided to any person or public or private entity who is not a~~  
24 ~~party to the claim unless that person identifies himself or herself~~  
25 ~~or that public or private entity identifies itself and states the~~  
26 ~~reason for making the request. The administrative director may~~  
27 ~~require the person or public or private entity making the request~~  
28 ~~to produce information to verify that the name and address of the~~  
29 ~~requester is valid and correct. If the purpose of the request is~~  
30 ~~related to preemployment screening, the administrative director~~  
31 ~~shall notify the person about whom the information is requested~~  
32 ~~that the information was provided and shall include the following~~  
33 ~~in 12-point type:~~

34 ~~"IT MAY BE A VIOLATION OF FEDERAL AND STATE~~  
35 ~~LAW TO DISCRIMINATE AGAINST A JOB APPLICANT~~  
36 ~~BECAUSE THE APPLICANT HAS FILED A CLAIM FOR~~  
37 ~~WORKERS' COMPENSATION BENEFITS."~~

38 ~~Any residence address is confidential and shall not be disclosed~~  
39 ~~to any person or public or private entity except to a party to the~~  
40 ~~claim, a law enforcement agency, an office of a district attorney,~~

1 any person for a journalistic purpose, or other governmental  
2 agency.

3 Nothing in this paragraph shall be construed to prohibit the use  
4 of individually identifiable information for purposes of  
5 identifying bona fide lien claimants.

6 (c) Except as provided in subdivision (b), individually  
7 identifiable information obtained by the division is privileged  
8 and is not subject to subpoena in a civil proceeding unless, after  
9 reasonable notice to the division and a hearing, a court  
10 determines that the public interest and the intent of this section  
11 will not be jeopardized by disclosure of the information. This  
12 section shall not operate to restrict access to information by any  
13 law enforcement agency or district attorney's office or to limit  
14 admissibility of that information in a criminal proceeding.

15 (d) It shall be unlawful for any person who has received  
16 individually identifiable information from the division pursuant  
17 to this section to provide that information to any person who is  
18 not entitled to it under this section.

19 SEC. 23. Section 550.1 is added to the Penal Code, to read:

20 550.1. (a) It is unlawful to do any of the following:

21 (1) Make or cause to be made a knowingly false or fraudulent  
22 material statement or material representation for the purpose of  
23 obtaining or denying any compensation, as defined in Section  
24 3207 of the Labor Code.

25 (2) Present or cause to be presented a knowingly false or  
26 fraudulent written or oral material statement in support of, or in  
27 opposition to, a claim for compensation for the purpose of  
28 obtaining or denying any compensation, as defined in Section  
29 3207 of the Labor Code.

30 (3) Knowingly assist, abet, conspire with, or solicit a person in  
31 an unlawful act under this section.

32 (4) Make or cause to be made a knowingly false or fraudulent  
33 statement with regard to entitlement to benefits with the intent to  
34 discourage an injured worker from claiming benefits or pursuing  
35 a claim.

36 For the purposes of this subdivision, "statement" includes, but  
37 is not limited to, a notice, proof of injury, bill for services,  
38 payment for services, hospital or doctor records, X-ray, test  
39 results, medical-legal expense as defined in Section 4620 of the

1 ~~Labor Code, other evidence of loss, injury, or expense, or~~  
2 ~~payment.~~

3 ~~(5) Make or cause to be made a knowingly false or fraudulent~~  
4 ~~material statement or material representation for the purpose of~~  
5 ~~obtaining or denying any of the benefits or reimbursement~~  
6 ~~provided in the Return-to-Work Program established under~~  
7 ~~Section 139.48 of the Labor Code.~~

8 ~~(6) Make or cause to be made a knowingly false or fraudulent~~  
9 ~~material statement or material representation for the purpose of~~  
10 ~~discouraging an employer from claiming any of the benefits or~~  
11 ~~reimbursement provided in the Return-to-Work Program~~  
12 ~~established under Section 139.48 of the Labor Code.~~

13 ~~(b) Every person who violates subdivision (a) shall be~~  
14 ~~punished by imprisonment in the county jail for one year, or in~~  
15 ~~the state prison, for two, three, or five years, or by a fine not~~  
16 ~~exceeding one hundred fifty thousand dollars (\$150,000) or~~  
17 ~~double the value of the fraud, whichever is greater, or by both~~  
18 ~~that imprisonment and fine. Restitution shall be ordered,~~  
19 ~~including restitution for any medical evaluation or treatment~~  
20 ~~services obtained or provided. The court shall determine the~~  
21 ~~amount of restitution and the person or persons to whom the~~  
22 ~~restitution shall be paid. A person convicted under this section~~  
23 ~~may be charged the costs of investigation at the discretion of the~~  
24 ~~court.~~

25 ~~(c) A person who violates subdivision (a) and who has a prior~~  
26 ~~felony conviction of that subdivision, of former Section 556 or~~  
27 ~~former Section 1871.1 of the Insurance Code, or of Section 548~~  
28 ~~or 550 of this code, shall receive a two-year enhancement for~~  
29 ~~each prior conviction in addition to the sentence provided in~~  
30 ~~subdivision (b).~~

31 ~~The existence of any fact that would subject a person to a~~  
32 ~~penalty enhancement shall be alleged in the information or~~  
33 ~~indictment and either admitted by the defendant in open court, or~~  
34 ~~found to be true by the jury trying the issue of guilt or by the~~  
35 ~~court where guilt is established by plea of guilty or nolo~~  
36 ~~contendere or by trial by the court sitting without a jury.~~

37 ~~(d) This section may not be construed to preclude the~~  
38 ~~applicability of any other provision of criminal law that applies~~  
39 ~~or may apply to a transaction.~~

40 ~~SEC. 24. Section 550.2 is added to the Penal Code, to read:~~

~~550.2. (a) It is unlawful to make or cause to be made any knowingly false or fraudulent statement, whether made orally or in writing, of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance, for the purpose of reducing the premium, rate, or cost of the insurance. Any person convicted of violating this subdivision shall be punished by imprisonment in the county jail for one year, or in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000), or double the value of the fraud, whichever is greater, or by both imprisonment and fine.~~

~~(b) Any person who violates subdivision (a) and who has a prior felony conviction of the offense set forth in that subdivision or of former Section 11760 of the Insurance Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (a). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.~~

SEC. 25. Section 550.3 is added to the Penal Code, to read:

~~550.3. (a) It is unlawful to make or cause to be made any knowingly false or fraudulent statement, whether made orally or in writing, of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance issued or administered by the State Compensation Insurance Fund for the purpose of reducing the premium, rate, or cost of the insurance. Any person convicted of violating this subdivision shall be punished by imprisonment in the county jail for one year, or in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000), or double the value of the fraud, whichever is greater, or by both imprisonment and fine.~~

~~(b) Any person who violates subdivision (a) and who has a prior felony conviction of the offense set forth in that subdivision, or of former Section 11880 of the Insurance Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (a). The~~

1 ~~existence of any fact that would subject a person to a penalty~~  
2 ~~enhancement shall be alleged in the information or indictment~~  
3 ~~and either admitted by the defendant in open court, or found to be~~  
4 ~~true by the jury trying the issue of guilt or by the court where~~  
5 ~~guilt is established by plea of guilty or nolo contendere or by trial~~  
6 ~~by the court sitting without a jury.~~

7 SEC. 26. ~~Section 633.3 is added to the Penal Code, to read:~~

8 ~~633.3. (a) Subject to the policy required in subdivision (c), a~~  
9 ~~peace officer who is an investigator within the Fraud Division of~~  
10 ~~the Department of Insurance, when acting within the course and~~  
11 ~~scope of his or her employment and when conducting a criminal~~  
12 ~~investigation, may listen to, monitor, or record any~~  
13 ~~communication otherwise prohibited from being listened to,~~  
14 ~~monitored, or recorded pursuant to Sections 631, 632, 632.5,~~  
15 ~~632.6, or 632.7.~~

16 ~~(b) Evidence obtained by an investigator specified in~~  
17 ~~subdivision (a) is admissible.~~

18 ~~(c) (1) No investigator may listen to, monitor, or record any~~  
19 ~~communication as specified in subdivision (a) until the~~  
20 ~~Department of Insurance establishes a written policy that governs~~  
21 ~~the procedures to be used in the gathering of evidence under this~~  
22 ~~section and that addresses any notification procedures required~~  
23 ~~with respect to the monitoring or recording of conversations.~~

24 ~~(2) The Department of Insurance shall submit that policy to~~  
25 ~~the Attorney General.~~